

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and following commentary. With entry of the present amendment, claim 1 will be revised and pending.

Specification

Applicants have requested that drawings 2-4 be canceled, thereby overcoming the outstanding objection to the specification.

Claim Rejections – 35 USC 112, Enablement

Applicants urge that amended claim 1 is enabled and the outstanding rejection should be withdrawn. Applicants urge that the THP-1 cell used in the working examples illustrates a cell producing cytokines such as TNF and IL-8, and cells producing TNF and IL-8 were well known at the time of filing. See Cassatella *et al.*, *J. Immunology* 148: 3216 (May, 1992), especially at page 3216, lines 31-34 of the left column and lines 1-5 of the right column. (Cassatella *et al.* was appended to the response filed on December 17, 2004.)

The polypeptide of the present invention is the N-terminal sequence of p43. In common with p43, the inventive polypeptide induces production of TNF and IL-8. See the present specification, page 15, and Ko, Y.G., *et al.*, *J. Biol. Chem.* 276: 23028 (June, 2001), which is already of record and which the Examiner acknowledges as A12 of the Form SB-08, submitted with the IDS filed on April 14, 2004. As Ko *et al.* state at page 23030, the cytokine function of p43 is substantially the same as the N-terminal polypeptide of p43 of the present invention, and its activity is superior to EMAP II as the C-terminal of p43.

Provisional Rejection for Obviousness-Type Double Patenting

Applicants request that the examiner withdraw the provisional judicially created obviousness-type double patenting rejection over Application No. 09/930,169. With the submission of this response, applicants believe that all outstanding rejections have been overcome. MPEP § 804 I. B., reproduced below, states that when a obviousness-type

provisional double patenting rejection is the only rejection remaining, the Examiner should withdraw the rejection and allow the application to issue as a patent.

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

Moreover, a non-final rejection for Application No. 09/930,169 was mailed on January 14, 2004. Applicants did not file a response to this rejection, and therefore, Application No. 09/930,169 is abandoned as a matter of law. Accompanying this response is a copy of the notice of abandonment for this application. Therefore, the provisional rejection for obviousness-type double patenting is improper and should be withdrawn.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to

Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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Amendments to the Drawings

Please cancel drawings 2-4.